



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Release Number: **201347023**

Release Date: 11/22/2013

Date: August 30, 2013

UIL: 501.06-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(6).

We made this determination for the following reason(s):

Your activities are not directed to the improvement of business conditions of one or more lines of business as required under Treas. Reg. § 1.501(c)(6)-1.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Karen Schiller  
Acting Director,  
Exempt Organizations  
Rulings and Agreements

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



TAX EXEMPT AND  
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DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Date: April 9, 2013

UIL 501.06-00

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

M =

N =

Date 1 =

Date 2 =

State =

For-Profit =

System =

\$v =

\$w =

\$x =

\$y =

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(6). The basis for our conclusion is set forth below.

Facts

You were incorporated on Date 1 as a State nonprofit corporation under the name M. Later you filed articles of amendment to change your name to N. Your Bylaws state that your purpose is:

[T]o create a nonprofit health IT venture to oversee the development and implementation of a \_\_\_\_\_ that will enable the creation and widespread use of \_\_\_\_\_ among consumers, providers, employers, and health plans. To achieve these efforts in a manner calculated to reduce costs and increase efficiencies in using \_\_\_\_\_ [you] will work to develop, deploy, maintain, and promote the widespread adoption of a nonproprietary, personal, private, portable \_\_\_\_\_ infrastructure, including building

the baseline applications, piloting programs among selected workforces, and developing universally accepted standards for data interchange. As part of these efforts, [you] may interface with other groups or bodies developing related standards, infrastructures or technologies.

You stated that your "primary mission" is to "help all businesses reduce health care cost through the development and adoption of user-friendly tools to assist consumers/patients/employees better understand and make better choices about their health and medical services."

Your Bylaws state that you shall have ten Directors on your Board. Each of your ten Founders appoints one Board member. The Founders consist of ten corporations, whose business activities are widely diverse.

Initially, you stated that membership in your organization was limited to large employers. However, you later stated that you decided not to place a limit on the size of prospective members. In addition, you stated that your activities do not provide a unique benefit to large employers, as opposed to small- or medium-sized employers.

You stated that your past activities include identifying and expanding technical software and hardware solutions for storing personal electronic health records, paying for attorneys to explore the regulatory requirements of federal and state authorities, sponsoring academic research, and building consensus between member employers on how to best approach the paradigm of . You stated that in the future, you will reduce your activities aiming to build a solution for and increase your activities aiming to build consensus, sponsor research, and resolve privacy and regulatory concerns.

You are closely affiliated with For-Profit. You own 40 percent of the authorized shares of For-Profit and 90 percent of the outstanding shares of For-Profit. Both of your officers are also officers of For-Profit. You stated that For-Profit's purpose is to develop a web-based personal health platform (System), which allows users to maintain personal, portable health records. Employers who enroll in System will pay ongoing fees for access.

Previously you worked to develop System. You later determined that it would be in your interest to transfer the intellectual property related to System to a new corporation, Foundation. You made several grants to Foundation. Foundation then determined that it would be in its interest to have System developed on a for-profit basis. Thus, For-Profit was formed. In connection with For-Profit's formation, Foundation transferred \$y in cash and intangible property worth \$w to For-Profit. Foundation was then dissolved, and the original grants you provided to it were returned to you, with the exception of cash that Foundation had already expended. Foundation returned shares of For-Profit to you valued at \$y. You stated that you may in the future convert this stock to cash value.

In addition, you extended a loan to For-Profit in the amount of \$x. For-Profit is required to make payments on the loan based on a schedule, and must pay interest, on a non-compounding basis, of 10 percent per year on the outstanding principal balance of the loan. You stated that the purpose of the loan was to permit For-Profit to repay principal and interest on other loans. You stated that the loan was negotiated and approved by your disinterested directors.

You stated that you would partner with health ministries to track member health outcomes using System. You provided us with a copy of a presentation given by your Executive Director regarding your partnership with health ministries. It discusses the benefits that the health ministries experienced through their use of System. We also asked you to provide documentation pertaining to your education and advocacy activities supporting the integration of health and medical data with health care applications. Many of the materials you provided focused on System and its benefits. In addition, it is difficult to tell whether these activities were conducted on your behalf or on behalf of For-Profit.

You also stated that you were working with a university to facilitate a health care data "learning agreement" to use System in the university's lab. Based on the documentation you provided regarding this learning agreement, its purpose was to expand the functionality of System. In addition, this appears to have been an activity of For-Profit, rather than your activity, since the documentation you provided us indicates that For-Profit's Chief Operating Officer was the point of contact for the university.

Finally, on page six of your response (dated Date 2) to our request for additional information, you referred to System as "[your] platform."

#### Law

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations ("regulations") provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization, whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Rev. Rul. 58-294, 1958-1 C.B. 244, describes an organization formed to promote the business interests of those involved in the manufacture and sale of a particular patented product. Membership in the organization is limited to those engaged in the manufacture and sale of the product. The organization owns the controlling interests in the corporation that holds the basic patents in the product. The revenue ruling holds that such organization does not qualify for exemption as a business league under § 501(c)(6) since it is engaged in furthering the business interests of the dealers of a particular product as distinguished from improving business conditions generally.

In Rev. Rul. 59-391, 1959-2 C.B. 151, exemption under 501(c)(6) was denied to an organization composed of individuals, firms, associations, and corporations, each representing a different trade, business, occupation, or profession. The organization was created for the purpose of exchanging information on business prospects and had no common business interest other than a desire to increase sales of members. The revenue ruling found that the organization's activities were not directed to the improvement of business conditions of one or more lines of business, but rather to the promotion of the private interests of its members.

Rev. Rul. 67-251, 1967-2 C.B. 196, concerns a business league made up of persons employed in a particular industry. In addition to engaging in activities directed to the improvement of business conditions in the line of business represented by its members, the league provides financial aid and welfare services to any member whose employment is involuntarily terminated. By furnishing financial aid to its members, league allows its net earnings to inuring to the benefit of private individuals through furnishing financial aid and welfare services to its members. Therefore, it is held that the league is not exempt from federal income tax under § 501(c)(6), even though its financial aid to members is minor in relation to its other activities which are directed to the improvement of business conditions in a line of business.

Rev. Rul. 76-38, 1976-1 C.B. 157, concerns an organization formed to maintain the good will and reputation of credit unions in a particular State. As its sole activity, the organization maintains a fund for assistance to credit unions that have financial difficulty or have become insolvent so that their members will not lose deposits upon liquidation. Interest-free loans are made to such credit unions, and no restriction is placed upon their use of the funds. Because the organization makes loans to credit unions, both solvent and insolvent, that may be used in their general operations, its loan activities are not solely calculated to achieve the goal of improving the industry's image by protecting depositors. Rather, the organization may, consistent with its stated policies, permit its money to be loaned on favorable terms to members in a manner that would provide little or no additional security to depositors. Such a loan policy provides a convenience or economy to members in their business, and is not an exempt activity under § 501(c)(6). Accordingly, the ruling holds that the organization does not qualify for exemption under § 501(c)(6).

Rev. Rul. 83-164, 1983-2 C.B. 95, describes an organization whose purpose is to conduct conferences for the dissemination of information concerning computers manufactured by one specific company, M. Although membership is composed of various businesses that own, rent or lease computers made by M, membership is open to businesses that use other brands of computers. At the conferences, presentations are given primarily by representatives of M, as well as by other experts in the computer field. Problems related to members' use of M's computers are also discussed and current information concerning M's products is also provided. The revenue ruling holds that by directing its activities to businesses that use computers made by one manufacturer, the organization is improving business conditions in a segment of a line of business rather than in an industry as a whole and is not exempt under § 501(c)(6). The revenue ruling concludes that by providing a focus on the products of one particular manufacturer, the organization is providing M with a competitive advantage at the expense of manufacturers of other computer brands.

In *National Muffler Dealers Association v. U.S.*, 440 U.S. 472 (1979), the Supreme Court held

that an organization whose membership consisted of the franchisees of one brand of muffler did not constitute a line of business within the meaning of § 501(c)(6) because a single brand represented only a segment of an industry. The court concluded that exemption under § 501(c)(6) is not available to aid one group in competition with another within an industry.

In *Guide International Corporation v. U.S.*, 948 F.2d 360 (7th Cir. 1991), *aff'g* No. 89-C-2345 (N.D. Ill. 1990), the Court concluded that an association of computer users did not qualify for exemption under § 501(c)(6) because it benefited essentially users of IBM equipment. The court stated that the organization also served as an influential marketing tool for IBM because the conferences it held allowed IBM to showcase its products and services.

### Analysis

According to Reg. § 1.501(c)(6)-1, to be described in IRC § 501(c)(6) you must be an association of persons having some common business interest, and your purpose must be to promote the common business interest of your members and not engage in a regular business of a kind ordinarily carried on for profit. In addition, your activities should be directed to the improvement of business conditions in one or more lines of business as distinguished from the performance of particular services for individual persons. Finally, you would not be described in § 501(c)(6) if any part of your net earnings inures to the benefit of any private shareholder or individual.

Upon consideration of your application, we have determined that you do not qualify for exemption under § 501(c)(6) because—(1) your activities are not directed to the improvement of business conditions in one or more lines of business, but merely to a segment of a line of business; (2) your members lack a common business interest; and (3) your net earnings inure to the benefit of private shareholders or individuals

### *Line of business test*

Your purpose is not to improve business conditions in one or more lines of business. Rather, according to your bylaws, your purpose is to "create a nonprofit venture to oversee the development and implementation of a .... To achieve these efforts ... you will work to develop, deploy, maintain, and promote the widespread adoption of a ... Personal Health Web infrastructure, including building the baseline applications, piloting programs among selected workforces, and developing universally accepted standards for data interchange." To that end, you worked to develop System before it was transferred to For-Profit to develop on a for-profit basis, and your current activities consist chiefly in promoting and supporting System.

Rev. Rul. 74-147 holds that an organization whose members represent diversified businesses that own, rent, or lease digital computers produced by various manufacturers and that was formed to provide a forum for the exchange of information leading to the more efficient utilization of computers by its members, and thus improving the overall efficiency of the business operations of each, qualifies for exemption under § 501(c)(6). On the other hand, Rev. Rul. 83-164 holds that an organization similar to the organization described in Rev. Rul. 74-147, but that directs its activities only to the users of computers made by one manufacturer, M, does not qualify for exemption under § 501(c)(6) because its activities provide a competitive advantage to

M and to its customers. Thus, such activities serve only a segment of a line of business rather than being directed towards the improvement of business conditions in one or more lines of business as a whole.

*National Muffler Dealers Association v. U.S.*, 440 U.S. 472 (1979) involved an organization whose members consisted of franchisees of one muffler brand. In concluding that the organization did not qualify as a business league, the Supreme Court held that § 501(c)(6) does not describe organizations designed to aid only one segment of an industry. Similarly, *Guide International Corporation v. U.S.*, 948 F.2d 360 (7th Cir. 1991) describes an association of computer users that primarily benefited users of IBM equipment, rather than computer tools in general. The organization served as a marketing tool for IBM because it allowed IBM to showcase its products.

You are like the organization described in Rev. Rul. 83-164 because your activities serve to favor and promote System over other applications. Like the organization described in *National Muffler Dealers Association v. U.S.*, you serve primarily to benefit one segment of an industry, rather than the industry as a whole. Although there may be incidental benefits to other software providers as a result of your activities, your primary purpose is to benefit System.

In addition, you are like the organization described in *Guide International*. That organization's stated purposes were: "(a) The promotion of sound professional practices with respect to the uses of data processing equipment . . . (b) The exchange and dissemination of information concerning data processing equipment . . . and (c) The participation with manufacturers of data processing equipment . . . in the improvement and development of products, standards, and education." 948 F.2d at 361. Your stated purposes similarly involve education, the development of standards, and the exchange of information.

Like *Guide*, you are primarily operated to benefit a particular product: namely, System. The 7<sup>th</sup> Circuit affirmed the district court's holding that "*Guide primarily advances IBM's interests and that any benefit to its members and other data processing companies who use information prepared by Guide is incidental.*" 948 F.2d at 362 (emphasis in original). Similarly, you primarily benefit System and its users, while the benefit you provide to other electronic health records companies is incidental. The presentations and other materials you submitted to us suggest that you largely use such materials to promote System. In addition, your website primarily focuses on System, and makes little or no distinction between you and For-Profit.

Rev. Rul. 58-294 describes an association organized and operated for the purpose of promoting uniform business practices in connection with the manufacture and sale of a certain patented product. The organization owns a controlling interest in the corporation that holds the basic patents on the particular product and sells to its members the materials and equipment necessary to manufacture the product. The Revenue Ruling held that the organization does not qualify for exemption under § 501(c)(6) since it is engaged in activities which are ordinarily carried on for profit and since it is engaged in furthering the business interests of the dealers in the particular patented product, rather than the improvement of business conditions of one or more lines of business.



You are like the organization described in Rev. Rul. 58-294 because, through your ownership of 90 percent of the outstanding shares of For-Profit, you have a controlling interest in that entity. For-Profit's purpose is to develop and sell System. Your activities promote the use of System and therefore further the business interests of For-Profit. Therefore, you are operating for the benefit of your related entity, For-Profit, and not for the benefit of promoting your members' common business interest.

Rather than promoting the adoption of \_\_\_\_\_ generally, you are promoting the use of a particular \_\_\_\_\_ system, System, which you have helped to create. You and your leadership stand to gain from its adoption, due to your ownership of For-Profit's stock and the common control between you and For-Profit. You have a stake in System's success, due to the loan you extended to For-Profit that is currently in repayment.

In addition, there is little practical distinction between you and For-Profit. Your officers are all officers of For-Profit. You provided us with documentation about your activities which shows that many of those activities were conducted in the name of For-Profit. Other documents do not specify the entity on behalf of which the activities were performed. You referred to System in your communication with us as "[your] platform." Taken together, the facts and circumstances indicate that the distinction between you and For-Profit is tenuous.

#### *Inurement*

You made a loan to For-Profit in the amount of \$x, which is approximately half of one year's average annual gross receipts in the time period for which you submitted financial data.

Inurement involves an expenditure of organizational funds resulting in a benefit which is beyond the scope of the benefits which logically flow from the organization's performance of its exempt function. The exempt function as a § 501(c)(6) organization is to improve business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. Thus, in Rev. Rul. 67-251, the furnishing of financial aid and welfare services to the members of a business league was said to constitute the inurement of the league's net earnings to the benefit of private individuals. Again, in Rev. Rul. 76-38, the making of loans to the members of a business league, loans which may be used in the borrower's general operations, was said to be an activity that is not an exempt activity under § 501(c)(6). Similarly, the making of a loan to For-Profit to enable it to repay principal and interest on other loans does not serve to improve business conditions of one or more lines of business. Rather, the loan constitutes a particular service to an individual commercial business, a benefit that is beyond the scope of the benefits which logically flow from the performance of the exempt functions described in § 501(c)(6). Thus, in making the loan you have allowed your net earnings to inure to the benefit of private individuals in violation of the inurement prohibition of § 501(c)(6).

#### Conclusion

Because your activities are not directed to the improvement of business conditions in one or more lines of business and because you have allowed your net earnings to inure to the benefit of private shareholders and individuals, you do not qualify for exemption under § 501(c)(6).

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

*Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.*

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service  
TE/GE SE:T:EO:RA:T:1

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Director, Exempt Organizations  
Rulings & Agreements